



STATE OF DELAWARE


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June 8, 2015

STAFF MEMORANDUM

TO: The Chairman and Members of the Commission

FROM: Toni Loper, Public Utility Analyst II 

SUBJECT: IN THE MATTER OF THE JOINT APPLICATION OF FIBERTECH HOLDINGS CORP., FIBER TECHNOLOGIES NETWORKS, LLC, AND SIDERA NETWORKS, INC., LIGHTOWER FIBER NETWORKS I, LLC AND LIGHTOWER FIBER NETWORKS II, LLC FOR APPROVAL TO TRANSFER CONTROL OF FIBER TECHNOLOGIES NETWORKS, LLC AND FOR CERTAIN FINANCING ARRANGEMENTS (FILED MAY 9, 2015)

Application:

On May 9, 2015 Fibertech Holdings Corp. ("Fibertech Holdings"), Fiber Technologies Networks, L.L.C. ("Fibertech"), Sidera Networks, Inc. ("Sidera"), Lightower Fiber Networks I, LLC ("LFN-I"), and Lightower Fiber Networks II, LLC ("LFN-II") collectively referred to as the ("Applicants") filed an application with the Delaware Public Service Commission ("Commission") seeking authorization for a transfer of control of Fibertech to Sidera, and for Fibertech, LFN-I, and LFN-II to participate in certain financing arrangements subsequent to a transfer of control transaction.

Applicants:

Fibertech is a New York limited liability company, and a wholly-owned subsidiary of Fibertech Networks, LLC, ("Fibertech Networks") a Delaware limited liability company. Fibertech Networks is a subsidiary of Fibertech Holdings, a Delaware corporation. The principal business address of Fibertech, Fibertech Networks and Fibertech Holdings is 300 Meridian Centre, Rochester, NY 14618. Fibertech was granted a Certificate of Public Convenience ("CPCN") to provide facilities-based and resold telecommunications services within the state of Delaware on November 25, 2003 by Public Service Commission ("PSC") Docket No. 03-463, Order No. 6310.

LTS Group Holdings LLC (“LTS Holdings”) is a Delaware limited liability company. Sidera is a Delaware corporation and is an indirect, wholly owned subsidiary of LTS Holdings.

SNI Merger Sub Inc. is a Delaware corporation and was created for the purposes of the transaction.

Lightower Fiber Networks I, LLC is a Delaware limited liability company. Lightower Fiber Networks II, LLC is a New York limited liability company and a direct subsidiary of Sidera. LFN-II was granted a Delaware CPCN to provide local exchange and competitive intrastate telecommunications services within Delaware.¹ Both LFN-I and LFN-II are operating subsidiaries (together, the “LT Operating Companies”) of LTS Holdings and have principal offices located at 80 Central Street, Boxborough, MA 01719. LFN-I was granted a CPCN to provide resold and facilities-based local exchange and intrastate telecommunications services within the State of Delaware on March 3, 2015 by PSC Docket No. 14-0569, Order No. 8711.

Transaction:

The purpose of this docket is for authorization for two transactions. First, a transfer of control of Fibertech to Sidera. Second, for Fibertech, along with LT Operating Companies to participate in financing arrangements to be entered into in connection with the transfer of control.

The Applicants have provided notice to the Commission that LFN-I and LFN-II have elected to be regulated under the provisions of the Telecommunications Technology Investment Act (“TTIA”) Title 26 *Del. C.* §§704-711. LFN-I and LFN-II do not provide switched access or basic services² as defined in the above referenced regulations and as such participation in financing agreements between these two entities does not require Commission approval under 26 *Del. C.* §215(d). However, the Applicants are requesting Commission authorization for Fibertech to participate in the existing financing arrangements in which LFN-I and LFN-II currently participate.

Fibertech Holdings and its subsidiaries, LTS Buyer LLC (LTS Buyer”) and/ or Sidera (together, “LTS Buyer” or the “Borrowers”) expect to obtain additional long-term debt financing in the aggregate amount of \$1,324.5 million, of which \$985.4 million is expected to be in the form of additional senior

¹ The original certificates of public convenience were granted to Consolidated Edison Communications, Inc. in DE PSC Order No. 5654, January 30, 2001, which merged with and into Con Edison Communications, LLC. Subsequently the Company changed its name to RCN New York Communications, LLC, then to Sidera Networks, LLC, and finally to Lightower Fiber Networks II, LLC.

² Under the provisions of 26 *Del. C.* §706 (e) if a telecommunications service provider elects to be governed under Title 26 Chapter 1, Subchapter VII-A, and offers basic services and switched access services, as defined in 26 *Del. C.* § 705(a)(1), Commission approval is required for transfers of control, as set forth in § 215(b). LFN-I and LFN-II do not provide basic or switched access service and have elected to be regulated under Subchapter VII-A, therefore Commission approval of the transfer of control and financing arrangements for these entities are not required.

secured revolving credit facilities, and the remainder as unsecured debt under separate financing arrangements.

Public Interest:

The Applicant's assert that the public interest will be served. The transactions will allow Fibertech to access to operational and managerial resources of Sidera which will benefit customers and allow Fibertech to strengthen its competitive position. Furthermore, the transaction is expected to be transparent to customers, and is not expected to affect current operations of Fibertech, nor adversely affect competition for telecommunications service in Delaware. In addition, the Applicants have shown that the transaction and the financing arrangements are for proper purpose and is seeking the approvals of the regulatory authorities which are necessary for the Transaction and the Financing to demonstrate that it is in accordance with the law.

Staff Recommendation:

Applications seeking approval of a transfer of control by large multi-state resellers of competitive intrastate telecommunications services technically come under the provisions of 26 *Del. C.* §215 because the companies are deemed to be public utilities. The Applicants have represented that the Transaction is in accordance with law, for a proper purpose, and consistent with the public interest. The Commission has previously allowed such applications to become effective by statutory approval without Commission action. The result seems appropriate under the circumstances. Staff, therefore, recommends that the Commission not act on this application. Under 26 *Del. C.* §215(d), the effect will be that the application is deemed to be approved by the Commission. Staff will also acquire verification from the Applicant that the proposed transaction and financing arrangements have been completed.